

# Legislative Ethics Board

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## COMPLAINT 2023 – No. 16

*In re Harmon*

December 15, 2023

### REASONABLE CAUSE FINDING AND STIPULATION

#### I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated RCW 42.52.070 (special privileges) and .160 (use of public resources for private gain) when she used her legislative computer, her legislative title and the influence of Rep. Schmick's office to benefit herself and a close relative.

#### II. PROCEDURAL HISTORY

Complaint 2023 – No. 16 was received on August 30, 2023. The complaint was discussed at the Board's regularly scheduled meeting on October 27, 2023.

#### III. JURISDICTION

The Board has personal and subject matter jurisdiction. RCW 42.52.320.

#### IV. FINDINGS OF FACT

##### A. Introduction

1. Complainant is the designated ethics adviser to the Department of Corrections (DOC).
2. Respondent is the Legislative Assistant to Rep. Joe Schmick. She has been employed by the legislature for approximately 11 years. Her legislative electronic signature attached to her email states that she is the Senior Legislative Assistant for Rep. Joe Schmick.
3. Respondent currently resides in Olympia, Washington.
4. Rep. Schmick represents the 9<sup>th</sup> legislative district located in eastern Washington.

5. On January 19, 2023, one of Respondent's relatives (John Daly) was convicted in Chelan County of several crimes and sentenced to 5 years in prison. Prior to his conviction, he had resided in Chelan County (Leavenworth) for 12 years. Leavenworth is located in the 12<sup>th</sup> legislative district.
6. John Daly arrived at the Washington Corrections Center at Shelton<sup>1</sup> on January 20, 2023. He moved to Airway Heights Correction Center (AHCC) on April 26, 2023 and is still assigned there. AHCC is located in the 6<sup>th</sup> legislative district.
7. On the intake form completed by John Daly on February 7, 2023 while at the Shelton facility, he listed Respondent as his close relative.
8. Respondent submitted a visitation application and questionnaire on March 15, 2023, indicating that she a close relative of John Daly.

**B. Respondent's Contacts with DOC in 2022**

9. On 10/20/22, Respondent, from her legislative account, sent an email to Stefanie Carlson, the legislative liaison to DOC, asking whether the sentencing guidelines for a crime with which her close relative had been charged were changing in 2023.
10. Ms. Carlson responded that the DOC bill requesting that change died the previous year in the House Appropriations Committee.

**C. Respondent's Contacts with DOC in 2023 – in General**

11. Most of Respondent's 2023 email contacts with DOC in this matter were sent from her legislative account with her official title attached. There were some that came from her personal email account and those are specifically noted. In many of the voicemails she left for various DOC personnel, DOC indicated that she stated she was calling from Rep. Schmick's office.
12. Most of Respondent's email contacts with DOC in this matter were sent during the workweek and during work hours.
13. Respondent had previously worked with Ms. Carlson on constituent issues on behalf of Rep. Schmick.

**D. Respondent's Contacts with DOC – Outside Time and Book Availability**

14. On 2/21/23, Respondent emailed Stefanie Carlson stating that she had left Ms. Carlson a voice mail requesting information about the outside recreation time and book availability for persons incarcerated at Shelton. Respondent's relative was incarcerated at Shelton at the time of this inquiry. Ms. Carlson responded to Respondent's email the same day stating that she would have someone from the DOC prisons division put together some information for her.

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<sup>1</sup> All DOC inmates are initially sent to Shelton to be processed, evaluated, and assigned to a facility.

15. On 3/2/23 Ms. Carlson replied to Respondent's query about a Shelton inmate's ability to have outside recreation time and access to books.
16. Respondent stated to this investigator that the questions she asked of Ms. Carlson did relate to John Daly, her relative, although she did not disclose this fact to Ms. Carlson.

E. Respondent's Contact with DOC Regarding Availability of Tablets and Medical Care

17. On 6/13/23, Respondent emailed Ms. Carlson stating that the family of one of Rep. Schmick's constituents had questions about the availability of electronic tablets and medical appointments for an inmate incarcerated at AHCC. Respondent stated that the constituent to whom she was referring was her relative, John Daly, although she did not reveal this information to Ms. Carlson.
18. Respondent indicated she was under the mistaken belief that Rep. Schmick's district included AHCC and because her relative was incarcerated there that he was Rep. Schmick's constituent. In her response to Respondent's email, Ms. Carlson asked for the incarcerated constituent's name or DOC number. Respondent replied that the family did not want to share that information for fear of retaliation.
19. Respondent told this investigator that she made these inquiries because she was concerned that her relative had not yet received a working tablet and he needed a tablet with which to email her and others. She was concerned about his mental health if he did not have the ability to send email.
20. On 6/27/23, Respondent emailed Ms. Carlson asking why she had not heard back from her regarding the tablet and medical appointment issues.
21. On 6/28/23, Ms. Carlson sent a lengthy email to Respondent in response to her questions.
22. Respondent indicated that when she shared the information she had received from Ms. Carlson with Mr. Daly, he asked her a number of follow-up questions about the tablets. Respondent then sent these questions to DOC. Ms. Carlson assumed they were being asked on behalf of one of Rep. Schmick's constituents.
23. On 6/29/23, Respondent sent Ms. Carlson an email stating that she had shared the information provided by Ms. Carlson with the constituent's family and they had the following specific follow-up questions:
  - Number of inmates at Airway Heights;
  - Number of inmates on the waiting list for tablets;
  - Timeline for getting fully working tablet into the hands of an inmate;
  - How many of the 12,000 total inmates are waiting for tablets?;
  - Is the company DOC uses for tablets very responsive to DOC's needs?;
  - Is DOC being efficient in replacing the tablets?
  - Does DOC believe that mental health is important to inmates and that having tablets assist in lowering mental health issues?

24. On July 18, 2023, Ms. Carlson responded in detail to the questions posed in Respondent's 6/29/23 email.

F. Respondent's Contact with DOC Regarding Commissary Issue

25. On August 24, 2023, Respondent sent Ms. Carlson an email stating that Rep. Schmick had a constituent, John Daly, incarcerated at AHCC whose father had sent him money. Respondent provided Ms. Carlson with John Daly's name and inmate number and indicated that Mr. Daly never received the money. Respondent stated in the email that she had called AHCC and "about 10 other numbers on the DOC website" but never received a call back in the three weeks since she started calling. Respondent stated in her email that she had hoped to connect with someone who could have assisted her without having to bother Ms. Carlson. Respondent asked Ms. Carlson for the number of someone who could resolve this issue. Although she did provide his name to Ms. Carlson, Respondent did not reveal that Mr. Daly was a close relative.
26. On 8/25/23, emails from Respondent to several other DOC employees stated that John Daly happened to be in the same district as the legislator for whom she works leading those she contacted to believe she was contacting them about a constituent.
27. DOC has an established protocol<sup>2</sup> when contacted by a legislator's office to ensure that the DOC Correspondence Unit in HQ is notified and will be responsible to ensure that a response to the legislative office is completed appropriately. As a result, Respondent's email to Ms. Carlson was brought to the attention of Melena Thompson, Director of the Executive Policy Office. Ms. Thompson then requested that Dianne Doonan, DOC's Assistant Comptroller look into the commissary matter.
28. On 8/25/23 Diane Dorman sent an internal email stating that there was no evidence that a check had been set to John Daly and that Respondent had previously made several JPay (commissary) deposits in the past and was listed in OMNI (DOC computer system) as John Daly's close relative. This email was the first indication to Ms. Carlson and the Complainant that Respondent's emails and questions regarding the commissary issue related to Mr. Daly.

G. Respondent's Contacts with DOC Regarding Special Visits

29. On 9/1/23, Monica Roth, a DOC employee, emailed the Complainant that she had received a strange call from Respondent who said she worked for Rep. Schmick and was calling about the special visit approval she had been seeking.
30. On the same date, Respondent emailed Ms. Carlson asking about the special visit with Mr. Daly that she had requested and her concern that no one had gotten back to her. In this email

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<sup>2</sup> DOC Policy 140.010, issued in 2021, provides that DOC considers it a priority to maintain a working relationship with legislators and legislative staff and respond promptly to requests for information regarding: department operations and programs; inquiries on specific individuals under DOC jurisdiction; and constituent concerns. Citing the policy, in a memo issued by the Secretary of DOC on December 19, 2022, she reminded staff that if they receive a question from a state legislator (or their staff) they are to immediately coordinate with Stefanie Carlson who will assist in answering these inquiries to ensure that DOC is timely, consistent and responsive to the inquiries.

Respondent states, "I am leaving here in a few minutes to head to Airway Heights and so I need approval to visit with him on Sunday as I am unable to do so on his regular visit on Saturday due to a family funeral."

31. Respondent's request for a special visit on 9/3/23 was ultimately approved.
32. On 9/6/23, from her personal account, Respondent emailed Ms. Carlson asking her to call her on her work phone or personal cell phone to go over the issues Respondent had experienced getting her special visit approved.
33. On 9/7/23, Ms. Carlson responded asking whether the special visit was for Rep. Schmick or a personal visit by Respondent. Ms. Carlson further stated that some of the issues Respondent had experienced regarding her special visit approval could have been due to the wildfires in Spokane.
34. On 9/7/23, from her personal email account, Respondent indicated to Ms. Carlson that the special visit had nothing to do with wildfires or a personal visit by Rep. Schmick. Respondent indicated she wanted to discuss with Ms. Carlson the issues she had experienced getting her 9/3/23 special visit with Mr. Daly approved.

#### H. Rep. Schmick

35. Rep. Schmick was unaware that Respondent was making inquiries about her relative using her legislative computer, legislative title and his office.
36. Rep. Schmick was unaware that Respondent's relative was incarcerated until she discussed the ethics complaint with him.
37. Rep. Schmick has informed Respondent that, henceforth, any communication about her relative with DOC must be done using a personal device not a legislative device.

#### I. Respondent's Explanation

38. In response to a request for information Respondent may have in addition to that supplied by DOC, Respondent sent the following email on October 18, 2023:

*This is in regards to the "special visit" assistance that I essentially took care of on my own-didn't know I was going to be able to - so I reached out to Stefanie. Then before Stefanie did anything-whereas, not sure she would anyway-so far she hadn't been helpful in any way-other than just info that didn't make much sense. The second and third issue I had (this one being 3rd) she knew it was [John]-I had given her all the info she needed - Unfortunately, I did not know there was a DOC Ombudsman website I could have gone through to work on resolving these issues until after I received the complaint letter from you. I was sharing my dilemma-and now I know. I also, am pretty naive, I guess-as I thought an ethical violation was if you were threatening someone through a legislators office-using the "power" of the legislator. I never had any intentions other than after I tried to assist on my own-as did my [relative]-who was incarcerated, because I know many lobbyists, agency legislative liaisons that it would be okay if I prefaced on the second and third issue that this was my [relative], [John]-who lives at the Airway Heights Correctional Center in what I thought was Rep. Schmick's legislative district (redistricting and he has parts of Spokane). I told Stefanie that I*

*was having these issues-aside from the anonymous tablet issue (I was concerned that [John] and others having this common issue didn't have any guidelines of the criteria for tablets that they say are available-but they are given ones that work half way, then no way at all-the process-what was the process?*

*With the "\$150 3 week lost cashier's check at DOC" and the "special visit form lost by the counselor or sergeant at AHCC-never to be found-and had to be redone) - I considered [John] a constituent and me his close relative to see if she could check because I wasn't able to resolve-and it was to me a big deal to resolve due-but needed to be resolved due to timeliness-and there was plenty of time that had passed to go through the normal process-but it didn't go through the normal process.*

*Never once-did Stefanie once say, Trixie, I can't assist you-wish I could, but I can't-thank you for sharing and letting me know that this is your relative. She never said anything that indicated that I shouldn't be able to ask her. I feel like Stefanie is enjoying setting me up below-when she knows [John] is my relative. I do casework in Rep. Schmick's office. [John] is what I thought was part of Rep. Schmick's district as he has parts of Spokane. I didn't think it mattered whether it was Rep. Schmick's office email or mine-regarding the situations-as once again-I wasn't harassing or forceful with Stefanie, frustrated yes-but I am hopeful we are all mature adults and that we can communicate professionally when information is presented to us.*

*I have worked within the legislature for 11 years. If I had thought for a moment I was doing something unethical, I wouldn't have connected with Stefanie. The anonymous issue with the tablet-was an issue not only with [John], but also other relatives I had spoken with who had the same issues. I didn't think necessary to give a name-because many times doing casework we do not use constituent names unless they have to be addressed due to the issue and research. I was trying to find out generally what the process was regarding broken tablets. The other two issues-I told Stefanie because I wanted to be honest and I kept her in the loop, I also thanked her for anything she did to assist-although I am pretty sure other than the tablet questions-she didn't assist, but she also didn't just tell me directly that regardless from what I understand at this point-that legislative assistants-no matter the issue-as public servants-are not allowed to be a constituent and ask for state agency help. Also, I did not know there was a DOC Ombudsman that could have assisted me. I now know this. This DOC personal family "incarcerated" situation is a first for me-and I am learning the ropes. I contacted Stefanie in good faith-not meaning any harm. Not knowing I was causing any harm.*

39. The DOC personnel with whom legislators and their staff normally work would not have known that John Daly was Respondent's close relative unless she had revealed it to them. According to Complainant, there are 12,690 persons incarcerated in DOC facilities and about 2000 incarcerated at AHCC. The most likely DOC employees who would know who an inmate's relatives are include the inmate's classification counselor at the facility or the public access or visiting room staff at the facility. None of these employees has regular contact with HQ staff.

#### IV. ANALYSIS AND CONCLUSIONS OF LAW

##### A. RCW 42.52.160 – Private Gain

RCW 42.52.160(1) prohibits a state officer or state employee<sup>3</sup> from using any person, money, or property (known in the opinions as public resources<sup>4</sup>) under his or her official control or direction, or in his or her official custody, for the private benefit or gain of the officer or another unless that use is part of a state employee's official duties. *In re Higginbotham*, 2005 – No. 1.

Many legislative assistants perform case work duties on behalf of constituents who reside in the legislator's district and who have an issue with a public agency for which they are seeking a legislator's assistance. Legislative assistants are responsible for ensuring that the person requesting assistance is actually a constituent. It is therefore incumbent on these legislative assistants to know the boundaries of their legislator's district.

Mr. Daly was not a constituent of Rep. Schmick's. Rep. Schmick represents the 9<sup>th</sup> legislative district and Mr. Daly is a resident of the 12<sup>th</sup> legislative district. For purposes of district assignment, an incarcerated person's residence remains the "inmate's last known place of residence." RCW 44.05.140(1)(b). Therefore, even if Respondent was correct in thinking that AHCC was located in the 9<sup>th</sup> legislative district, her relative was never considered a resident of the district and therefore, was not a constituent.

Further, Respondent's reference to her relative as a constituent when requesting assistance from DOC was incorrect. Based upon her prior casework experience with Ms. Carlson, it is likely she knew she could be more successful obtaining a tablet or commissary information for him from Ms. Carlson than going through the channels that someone without her connections would have to. She admits this fact in the email quoted in Fact number 37 above.

The Board has created an exception where some limited personal use of public resources is allowed. It is a three-prong test and all conditions must be met for the exception to apply. The rule states that if there is no actual cost to the state or the cost is de minimis, if there is a public benefit, and if the use does not interfere with the performance of official duties, then infrequent and incidental use of state resources for private benefit may be used. Rule 3(4). *See also In re McMillian*, 2006 – No. 8.

This exception has not been met. Respondent used the legislative email system as well as legislative equipment with which to contact DOC personnel multiple times on behalf of her incarcerated relative and herself. While the use of the system itself did not incur charges, these various contacts were made during working hours. The exception does not apply because the activity occurred during working hours which interfered with the performance of Respondent's official duties. *In re Oien*, 2001 No. 1.

Respondent contacted DOC personnel multiple times on behalf of her relative (tablets and commissary issues) and herself (special visit) using legislative resources. Although she identified Mr. Daly by name for the commissary issue, she did not indicate that he was her close relative and the DOC personnel she initially contacted at Headquarters would not have known this fact because she and her relative have different last names. Because Respondent is a legislative assistant allegedly calling on behalf of a constituent, her contacts with DOC would have been elevated in response. From her previous

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<sup>3</sup> "State employee" means an individual who is employed by an agency in any branch of government. RCW 42.52.010(18).

<sup>4</sup> "Public resources" include but are not limited to use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

work with DOC, it is likely that Respondent knew or should have known this. Respondent's actions constitute a violation of RCW 42.52.160.

B. Special Privileges

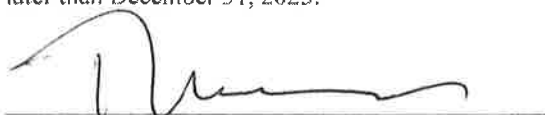
RCW 42.52.070 is violated when a legislator or legislative staff uses his or her position to secure special privileges or exceptions for himself, herself, his or her spouse, child, parent or another. The statute is not violated if the legislator or legislative staff is performing duties within his or her scope of employment. *In re Hankins*, 2007 – No. 1B.


As stated in the previous section of this report, conducting casework on behalf of a constituent is within the scope of a legislative assistant's employment. However, conducting casework on behalf of a family member who is not a constituent is not within the scope of a legislative assistant's employment. To do so using one's legislative title while indicating that the casework is being done on behalf of the legislator for whom the legislative assistant works is a violation of the special privileges prohibition and what RCW 42.52.070 was designed to prevent.

V. ORDER AND STIPULATION

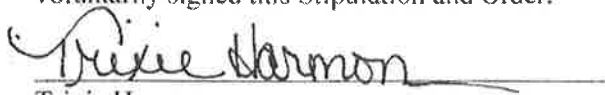
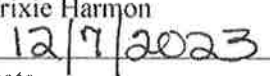
IT IS HEREBY ORDERED: that reasonable cause exists that Trixie Harmon violated RCW 42.52.070 and .160 and that she pay a civil penalty in the amount of five hundred dollars (\$500) payable to the Washington State Treasurer; provided, however, that two hundred and fifty dollars (\$250) of this penalty be suspended, with such suspension conditioned upon Ms. Harmon's having no further violations of RCW 42.52 through October of 2028.

IT IS FURTHER ORDERED: that Respondent receive refresher ethics training provided by Board Counsel no later than December 31, 2023.

  
\_\_\_\_\_  
Tom Hoemann, Chair

  
\_\_\_\_\_  
Date

I, Trixie Harmon, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; agree to the entry of findings of fact and conclusions of law, and agree to personally sign it as a resolution of this matter and have voluntarily signed this Stipulation and Order.

  
\_\_\_\_\_  
Trixie Harmon  
  
\_\_\_\_\_  
Date

Having reviewed this proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.





Tom Hoemann, Chair